

SPEECH

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OF THE

HON. W. C. PRESTON, OF SO. CAROLINA,

ON THE

VETO POWER,

AND

IN REPLY TO MR. CLAY, OF KENTUCKY

DELIVERED

IN THE SENATE OF THE U. S.,

APRIL, 1842



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SPEECH.

Mr. PRESTON said: If I consulted my own vanity, Mr. President, I would refrain from placing myself thus in immediate contrast with my distinguished friend from Kentucky, and shrink from the cold regard of those whose eyes are idly bent upon any one who succeeds him. This self-neglect, however, will show how deep and earnest are the convictions which make me dissent, not only from the general conclusions, but from most of the particular views, which have been urged upon us, and against which I seize even so unfavorable an occasion to enter my protest. I shall do so earnestly, but briefly. With his accustomed frankness, my honorable friend placed his proposition, to limit the Executive veto, before the people in the late presidential contest, and pledged himself to move upon it in the way which he has this day redeemed. The subject was therefore fully presented for discussion; and after the maturest deliberation I could give to it, not without a strong bias from the high authority of my honorable friend, I was compelled to differ with him, and on all fit occasions, before the public, expressed that difference with entire candor. No one is more sensible than I am of the vast augmentation of Executive power during the last ten or twelve years, or has set himself in more constant opposition to it. It was a vivid perception and patriotic apprehension of this increasing power, with the firmness to oppose and the courage to make war upon it, that gave birth to the Whig party, and has kept it together, in spite of many minor differences, until our common efforts resulted in the late most signal victory. I have not changed my opinion, that the Executive power has increased and ought to be diminished, nor abated a whit in my purpose to devote my best efforts to this object. I do not, however, concur with my honorable friend in attributing this increase of Executive power to any undue prerogative conferred upon the President by the Constitution, but to unconstitutional or extra-constitutional usurpations. Within the respective limits, assigned by the Constitution, for each of the departments, their action will be safe for the country; but if either transcend those limits, and usurp powers not appropriated to it, the danger at once becomes threatening, no matter what department be guilty of the usurpation. And I do not hesitate to announce it as my deliberate judgment, formed by an attentive observation of our history, that the first and greatest danger results from the usurpation of power by Congress itself. Such usurpation is more insidious and less suspected in large and popular bodies—it has more influences to disguise and protect itself—it has more soothing appliances for the consciences of the agents, to seduce them to assume doubtful powers. The argument of my honorable friend is, that the Executive veto injuriously circumscribes the power of Congress. He does not appear to me to have it sufficiently present to his mind that, from the nature of our institutions, the sphere of Congress itself is, and ought to be, an extremely circumscribed one; that our trusts and duties are rigorously defined and clearly designated; and are, in short, but exceptions from the great residuary mass of power reserved by the States, who created us, and upon whom we have a

perpetual tendency to trench. With a natural feeling of self confidence we are apt to imagine that every thing is safe in our own hands, and every thing unsafe which is not in them : each department is inclined to be confident in itself and distrustful of others ; while the Constitution confides in all, but distrusts each. The two Houses especially are prone to think themselves peculiarly near the source of power, and to regard all interference as unnecessary, and every check as impertinent. The course of our long contest against Executive power has tended to strengthen this feeling in the legislative department ; and, in the moment of victory, we are disposed to overrun a territory upon which we have no claim—to substitute invasion for resistance, and convert defence into conquest.

For many years past, this Government, this whole General Government, has assumed powers and exercised jurisdiction over many matters which were never intended to be subjected to its action. Like all power, wherever lodged, it enhances itself. It is of its essential nature to do so : for, if power be in virtuous hands, it is extended to do good ; if in corrupt, it is extended for the purpose of ambition and avarice. “ *Ampliare jurisdictionem* ” is the gravitating principle of all organized power. I do not allude to this active principle of our General Government, as exemplified in its whole history, for any other purpose but its direct application to the present proposition. All will see and admit that, as you increase the power of this Government as a whole, you necessarily increase that of the Executive as a part ; and it is clear, that the vast accumulation in the Executive has been derived from the pouring into it of streams whose sources are found in the Capitol. An instance or two will illustrate this sufficiently for my present purpose. The General Government assumed the power of internal improvements, which of course sent the Executive agents to dispense favors and expend money in every portion of the country ; and, besides the influence thus acquired, in progress of time, the whole system, by an obvious process, concentrated itself in the hands of the President, and became an engine of most dangerous efficacy. This policy is, happily for the country, broken down and abandoned to such an extent that its parents of 1818 now reject their progeny with horror.

Of a similar character was the high protective policy, which eventually terminated, also, in the hands of the Executive, by giving him control over that most important, and, as experience has proved, most dangerous subject. A prime source, therefore, of Executive influence is found in the assumption by Congress of doubtful powers. I will not assert that the extra-constitutional assumptions by the two departments have accompanied each other in a direct ratio, but I do affirm that they have, and must necessarily bear, a certain proportion to each other ; and if the Constitution be practically abrogated, and Congress reduce this federative Government to a consolidation, the Executive will be the paramount department ; and as this progress towards consolidation is made, the controlling influence of the Executive will be perceived. The present proposition contemplates the liberation of Congress from the check of the Executive *veto*, but I am unwilling to see any restraint upon its manifest tendency to assume undelegated powers withdrawn ; for, while I dread the Executive, I have not less serious apprehensions of Congress. If we exceed our powers, the veto may be of service ; if we confine ourselves within them, it is harmless.

The organic law, as it came to us from our ancestors, has not conferred a more dangerous power on one department than on another of this Government. They were jealous of all, but more especially and conspicuously so of the Executive; and hence they circumscribed and fenced him round with restrictions, and cautiously allowed him only what could not be withheld.

The prophetic dread of Mr. Henry was the "union of the purse and sword" in the hands of this *whole* Government. The Constitution does not give them to the President, or endow him with any prerogative by which he may assume them. He may *usurp* them. He may trample on the Constitution, or overleap it, to seize upon them, but he does so not by virtue, but in spite of the instrument; and if you have a daring and reckless President, backed by a supple Congress, a bit of paper, more or less, will not stand in his way. It is not he, but his majorities, that constitute the danger, or rather his power to make majorities; and, when it comes to this, the only safety is where we have just now found it—in the appeal which the Constitution gives us every four years to the people. If that fail, vain are amendments to the Constitution—the very foundation of your institutions is rottenness.

Mr. President, I am sure the candor of the Senate, and I hope not even the smartness of debate, will suspect me of defending or vindicating the rash and usurping course of any Executive which has heretofore trampled upon the powers of Congress, and endangered our institutions. *I am defending the Constitution.* I am vindicating that great monument of wisdom and patriotism from objections which lie, not against it, but against its abuse and violation—not against the text of the holy writing, but against the interpolated glosses and perversions. I confess, sir, that I do entertain and cultivate a very profound reverence for this instrument. It was the production of a remarkable race of men—cool, virtuous, self-sacrificing, and heroical. At the foundation of their character were those deep and solid sentiments in which wise thoughts and acts find their remote sources, and slowly well forth, purified and cool, to gladden and fructify the world. Our generation may perhaps be as intellectual, or even of more active and searching habits of thought; but we are less schooled by great events—less disciplined by habitual converse with those grave and elevated principles which walked with them through the Revolution, up to its great consummation, in the instrument we are now called upon to change. I am inclined to look elsewhere and beyond the Constitution for the evils we feel, and which have been so glowingly depicted; nor do I believe there is much difficulty in finding their true origin. I have already indicated one source, and, in my judgment, a very abundant one, viz: the *legislative* assumption of unauthorized power. If this be true, as it certainly is, it is to be regretted that the Executive has not more frequently resorted to the veto. Another abundant source of Executive power is to be found in the increased expenditures of this Government, and in the multiplication of offices; another in the constructional power of unrestrained dismissal from office; another in the law providing a four years' tenure of very many of the offices, which enables the Executive to dismiss an officer without the responsibility of an open exercise of his power, and makes him every day the object of the wishes, hopes, and fears of the incumbent. Another, and perhaps the greatest, cause of the augmentation of Executive power is to be found in the personal character of a late President,

coupled with that of the party which sustained him, whose levelling and disorganizing principles always tend to absolutism in the hands of the favorite of the moment.

And this observation, Mr. President, the truth of which will be admitted by my honorable friend from Kentucky, appears to me entirely subversive of that point in his argument which he mainly rests upon, and has so much amplified and illustrated. He urges that the veto power of the President is inconsistent with the *democratic* spirit of our institutions, subversive of the fundamental maxim that the majority should govern, and an obstruction of the free sway of the will of the people. Of all this *we* are supposed by the argument to be the depository or the exponents. Not so, Mr. President. The reverse is true. My deepest apprehensions of an Executive influence absorbing all power, and destroying this Government, have resulted from the teaching of experience, that the Executive, of all the departments of Government, is the most democratic, most acted upon by popular influences, and most reacting upon popular masses. The position assumed is, that the Constitution should be so amended as to give additional energy to the popular will, and additional efficacy to the decisions of a majority of the people. If this be what is desired, the true plan is to increase the power of the President, he being the most direct representative, in the practical operations of our Government, of the democratic principle. In the memorable instance of General Jackson, whose predominant power so long subjugated us, where was its source? whence was he armed with strength to make his will the law? With an array of talent and energy in this Senate, surpassed at no former period, with a decided majority in the opposition, containing in its ranks as much industry, ardor, experience, and eloquence as has ever been brought against a Chief Magistrate, the President was arraigned before the people, and subjected to their verdict. What was it? His acquittal, and your condemnation. Whenever you threw him upon the masses, he came back reinvigorated from the maternal embrace, and armed, not with the *negative* powers of the Constitution, but with the burning energies of popular passion, to override all the checks and balances of the Constitution. The danger, therefore, is, not that the President may check the popular will, on the assumption of which the Senator's argument proceeds, but rather that it may confer upon him an undue and disorganizing energy. This, it may be said, is an argument for limiting his power, but, at least, it is not the argument of the distinguished Senator, and reverses it. While I am clear that the greatest portion of that power which results from representing the popular will, on very exciting topics, independent of and beyond the Constitution, is in the President, still, it does not follow that the checks and balances of the Constitution are not wisely devised. Indeed, the wisdom of that instrument is most conspicuous in this; and, when the honorable Senator complains that the veto power puts a check upon the decision of majorities and the prompt execution of the public will, he complains of what I consider the chief beauty and glory of our Government—those curious, complex, and multifarious contrivances inserted into every portion of the Constitution, which, like antagonist muscles, disposed throughout the animal economy, serve, by their continual play, to keep all in position. If it be true, as I have stated, that the popular principle is most energetically represented by the President, then the argument of my friend fails, and the Senate is the

check upon its overaction in his hand—if, however, *we* represent it most strongly, then the veto of the President is a check upon its overaction in our hands.

I utterly reject the dreadful doctrine of the unchecked government of majorities. I dissent from the proposition that this, or any other Government is intended to assert the will of majorities, in all cases, whenever or however ascertained—a doctrine inconsistent with regular government, subversive of social order, and repugnant to any settled notions of morality or fixed principles of right. Morality and right are pre-existent and permanent—the very antagonists of will and passion; and forms of government are instituted to control, by organized power, the wild and dangerous force, not only of individuals, but of masses. As laws are enacted to protect the weak against the strong, so constitutions are made to protect minorities against majorities, and to preserve the fixed and far-sighted purposes of the community against the tumultuous and fluctuating domination of its own passions, caprices, or impulses. This is true of all Governments, but most especially and emphatically true of this Federal Government, which, neither in its theory nor in its ordinary action, is, or is intended to be, controlled by, or to represent, numerical majorities. It may be that the ultimate sanction and guaranty of all government is force, and that a majority is the depository or the exponent of this force; but this is no more true of one form of government than of another—of an Athenian democracy than of a Turkish despotism. The difference between a good and a bad Government consists in the wise and judicious modification, control, and direction of this force, which is more tyrannical in an unbridled majority, acting from the unrestrained impulse of its own fiery will, than in any other form of absolutism. The two extremes are anarchy and despotism; and the latter, by the experience of all ages, has been found most tolerable. National existence and social order are compatible with the latter; not at all with the former. While, in our American constitutions of government, we recognise a more expansive energy in the will of a majority, and a less remote and more certain triumph for it in public affairs, yet we have most elaborately instituted a vast variety of means of checking and suspending it—of allowing it time for cool deliberation—of ascertaining it by various tests—of letting off any undue accumulation of steam, retaining only enough for the purposes of the engine. The very meaning and intent of a constitution is a restraint upon the majority. It is the deliberate declaration of the majority itself, that majorities shall not hereafter govern, but in a defined mode, and under specified restrictions. This is the first, the great, and all-pervading check. The House of Representatives, which, by the theory of the Constitution, most immediately, of all departments of the Government, reflects the popular will, is checked, in the first instance, by its own internal regulations, which frequently confer upon a minority an absolute check upon the majority—as, in all cases where two-thirds are required to carry a measure; then, the Senate is a check upon the whole body; then, the President upon both branches; then, the judges upon all three; then, the House and the Senate, by the power of impeachment, back again upon the judges: and all, except the judges, are, at stated periods, checked by the people in the elections.

In the application of each of these checks, it may happen that “the one-man power,” spoken of by the Senator, may be as con-

spicuously efficacious as he represents it to be in the hands of the President. No safe conclusion can be drawn from extreme cases, for they can always be answered by extreme cases. The Senator from Kentucky says that, by possibility, the President's will may control that of very many men as wise and good as himself. This is also true of a single member of either House, or of the Supreme Court. A measure may be carried unanimously by the House of Representatives—the immediate organ of the people—and may fail by a tie in the Senate, or may obtain, out of 51 Senators, 25 votes, with 26 against it. The majority of one is fatal: that one voice is as potential as that of 249 members. It is a one-man power against the whole House of Representatives—it is the voice of one man, not elected by the people, but by a State Legislature, not responsible to his Legislature, perchance, until six years have elapsed, and that Legislature (it may be) unanimously against him at the moment. Most of these conditions have been, to a great extent, recently fulfilled, in the rejection of the bill for the repeal of the bankrupt law, by the casting vote of the distinguished Senator himself.

But you may suppose a case where a measure has passed both Houses unanimously, and been approved by the President, and yet one single member of the Supreme Court may strike it dead upon your statute book, and (his intention being honest) you, nor any, nor all, the departments of the Government, nor the States, nor the people, can reach him, or infuse one spark of life into the dead law. Such results must be possible under every system of checks and balances. No doubt, when either of the departments is checked by another, it frets and chafes under the restraint, and is naturally disposed to make war against the opposing department. In general, that feeling is chiefly exhibited by the most popular branch. The French Assembly could not brook the restraint of a co-ordinate body, nor of a strong separate Executive, but took all power into its own hands, and through blood and horror terminated in the empire. In England, the King was beheaded, the House of Lords voted a nuisance, and the long Parliament run into the protectorate. The present occasion is the first time that a Senate, a small and powerful body, more remote from the people than the President or the House—itsself a check in every direction—has begun a war upon checks. We are elected for six years—one-third longer than the term of the President; we are elected by State Legislatures—he, by the people of the States; we have legislative, executive, and judicial power—he, executive only, and a qualified veto. The two Senators from New York, representing a population of two millions, are checked by the two Senators from Rhode Island, with a constituency of but one hundred thousand. If it be true that we ought to remove all obstructions to the free course of popular will—if, on the contrary, it be not the object of your Government to place checks upon it—why this small, irresponsible, powerful body, thrust into the very centre of the machinery, not only checking, in turn, the House of Representatives and the Executive, both of which are nearer the people than it is, but effecting, also, what is of more consequence and of more frequent occurrence, a check upon both united; for, in the history of our Government, it has been found that the House and the President are more frequently opposed to the Senate than the President and the Senate to the House? But if you provoke such inquiries, and push such principles, what is to become of that quiet and noiseless body closeted below there, in your vaults, whose mid-day deliberations are conducted by lamp-light, and from whose lips one whisper si-

lences the voice of legislation, obliterates the statutes of this and the State Legislatures, crumbles into atoms the decisions of twenty-six judiciatures, and calmly rebukes the tempestuous sea of popular opinion? If you enter upon this course, will you be able to halt before you reach that shrine? If you get up this storm, can you direct it so that it shall not burst in this hall, and sweep through the Supreme Court? Neither the Senate nor the Supreme Court have heretofore escaped menace upon the same principles on which the veto is now attacked; and these, in my judgment, are the two institutions most valuable in our form of government, and least able to protect themselves, but by the Constitution. I will not quarrel with any degree of democracy in the State Governments, or with any diminution of restraint upon the ascendancy of the popular will, in the daily actions of their Legislatures. I am content with the Constitution of my own State, and have no right to censure here that of others. But here, as a functionary of this federative Government, and as a Senator from a small State, I do object to any additional infusion of a spirit which would tend to consolidate our institutions and give a predominance of numbers over the separate influence of the States.

How cautiously, and, as we all admit, how properly, the power of majorities in Congress is checked by the Constitution, is seen in the requirements of two-thirds of this body to make a treaty; and there, where, if ever, a majority would be entitled to a predominant control—in the amendment of the fundamental law—it is most checked and circumscribed. To carry the measure proposed by my distinguished friend, two-thirds of both branches of Congress are requisite, and besides that, the concurrence of three-fourths of the States, amongst which Rhode Island is entitled to the same weight with New York; thus establishing, as a fundamental principle of Government, that a mere majority cannot change it, and that no change can be effected but by tedious, cautious, and complex proceedings, to overleap which would be revolution.

I will not assert the proposition, but I will not deny it, that it would be well to require a majority of two-thirds for the passage of every important law—for every money bill and every appropriation bill. I do not know that the country would suffer by it. That law of an ancient republic which provided that he who proposed a new law should do so with a rope about his neck, was not altogether without reason. There is no fear that any free Government will have too few laws—the danger is on the other side. An over-accelerated action is the danger of free institutions; it is the character of the age, and the vice of our legislation. Whatever is conservative, therefore, in the Constitution, should be preserved and invigorated. All that the veto can effect, or any other of the constitutional checks, is to keep things in *statu quo*. It is purely conservative. The veto is less so—is less positive than any of the other checks, for it is but qualified; while the checks of the two Houses upon each other, and of the Judiciary upon both, is absolute and uncontrollable. The whole House of Representatives, voting unanimously, cannot reverse a majority of *one* in the Senate; nor can both, unanimously agreeing, shake a decision of the Supreme Court. The veto of the President has not this efficacy; and surely, if any measure vital to the public interest, or involving a leading principle of liberty, be subjected to the veto, there will be virtue enough in the two Houses to carry it by two-thirds. On the other hand, it may fairly be presumed that, if a measure be opposed by more than one-third of each

branch, and by the Executive, it is not of so obvious and pressing good that its failure will seriously affect the country. Of such a state of things, at least, we have no experience; for no measure of such a character (sufficiently remote from our present passions and excitement to be judged of calmly) has yet occurred.

Of the late vetoes by the President, we are not yet in a mood of mind sufficiently calm to pronounce the judgment of posterity. It would be overweening self-confidence now, in the acme and plenitude of our passions, to say, that this recent veto; upon a measure passed but by a majority of two, is of such a revolting and dangerous character as to warrant us in tearing the power from the Constitution. Even if this conviction pressed upon us, it would be the part of common prudence to distrust ourselves, and postpone so grave an action until there could be no doubt that we were in a fit state of mind to examine into and pronounce against the deliberate wisdom of our ancestors; It will not be regarded as a superstitious reverence if I avow my determination to change no part of the Constitution, by however plausible theories assailed, unless it be also shown that its actual working has been so injurious and oppressive as to demand amendment. I do not consider the Constitution as a subject for mere speculative reasoning. It should not be lightly touched, or approached in an arrogant spirit of reform; but, having been approved by the judgment of our ancestors, and by two generations since, I am pleased to think that it begins to find support and strength also in our sentiments and affections. If there were some defects in its finishing, some omissions in carrying out its proportions, or some rugged projections from its surface, I rejoice to believe they are now or shortly will be covered over and hid by all the associations of deep love, solemn reverence, and pride and glory, which the human heart nourishes for time honored institutions. Let us not disturb the growth of these associations, which at once strengthen and adorn the noble fabric, by useless repairs, or mar the tone with which time begins to harmonize its aspect by fantastic patchwork or audacious reconstruction.

I put the question, with a certain degree of confidence, has the veto power worked a practical injury upon our legislation of such a magnitude as to demand an amendment of the Constitution? Are we urged to the adoption of the Senator's proposition by an overruling necessity; by the pressure of great suffering; by any serious and obvious inconvenience in the action of the Government? I have said that I place out of view the vetoes of the present President; but, in regard to them, I will take leave to say that, in each instance, they were applied to measures which the change of a single vote in this Senate, would have prevented from going to him. The President on these occasions was equal to but one vote, and surely, however much I may regret his course, I cannot consider it as so flagrant an instance of the tyrannical power of the veto as to wish therefore to abolish it. I do not propose to examine whether the vetoes heretofore interposed have been right or wrong, but whether their practical effect has been so deleterious as to amount to a grievance. What injury, then, practical and permanent, has resulted from the exercise of this power by the President? Who will point it out? The honorable Senator has not. Who remembers the number of vetoes, the measures to which they were applied, or the injury which they

have wrought to any man's person, property, or franchises, or to the general welfare? Our Government has now been in operation a half a century—exposed to all the trials incident to the working of a new machine; agitated by violent party dissensions; subject to the vicissitudes of prosperity and adversity, of war and peace; shaken by the alternate triumph and defeat of opposing parties; administered by nine Presidents. Amidst all these chances and changes, will any gentleman rise in his place and say that an impression, deep enough to be remembered a year, has ever been made by the veto? Instead of damming up and rolling back the current of our legislation, it has scarcely rippled its surface. Most of the Senators who hear me, learned as they are in our short history, will be surprised when I tell them, what I was surprised to ascertain in my preparation for this discussion, that there have been 14 cases of veto. Who remembers them? Are the wounds which they inflicted upon the country still bleeding? Do the scars remain? or have all of them except those immediately under our eyes passed away and left no trace behind? Doubtless, some of them, at the time, chafed the zealous promoters of the measures vetoed, and excited momentary doubts of the correctness of that power under whose operation they smarted; but the irritation passed off with the occasion, as I am persuaded it will now. Two of the vetoes were by the first President; his name precludes discussion of them. The next two Presidents, Adams and Jefferson, did not resort to the power. Mr. Madison exercised it four times—the calmest, the most philosophical of all our Presidents, who had most deeply studied and most elegantly expounded our Constitution—whose pure life, clear intellect, and gentle virtues embalm him in the mellowest affections of his countrymen. Mr. Monroe exercised the veto power once; General Jackson five times. Three instances of its exercise by Mr. Madison occurred in his first term, two in 1811, and one in 1812; and he was re-elected. Mr. Monroe's veto was in his first term, and he was re-elected. Four of General Jackson's occurred in his first term, and he was re-elected, and, moreover, was sufficiently popular at the end of his second term to secure the election of his nominee. Every President who has exercised the veto power has been re-elected; and the three who failed in a re-election never did exercise the power. These facts prove, beyond all controversy, that the country has not been injured or offended by the exercise of this power heretofore, and that the objections to it, therefore, are not practical or warranted by experience; but, on the contrary, that history and experience incontestably prove the unsoundness of those theories and speculations, which would persuade us either that the power is inconsistent with the interest of the country, or a dangerous or even offensive restraint upon the will of a majority.

This is, perhaps, neither the time nor place to discuss the theory of a qualified veto. Finding it in the Constitution, the abstract question is remitted from the Senate to the schools. There was a time when it was open for discussion, and when, if it involved such serious and exciting topics as those now pressed into the discussion, they would have been developed by the searching dialectics of Madison, or riven out by the lightning flashes of Patrick Henry. But the debates of the general convention, nor those of the State conventions, furnish us with objections to this power. It passed into the Constitution by a general acquiescence, as an obviously necessary portion of the system. Each of the other de-

partments is armed with checks to protect the general interests, or its own particular privileges and functions; and it would have been strange, indeed, if the Executive department had been endowed with no means of self-protection. The caution of the convention limited it to this negative power. His sole participation in the making of laws is, to say that, in the particular instance, they shall not be changed by a mere majority. While the President is endowed with the veto for the purpose, amongst other things, of protecting the Executive department against the encroachments of the Legislative, the Constitution provides, at the same time, that he shall not exercise it wantonly, capriciously, or tyrannically, by subjecting him to the necessity of returning the vetoed bill within ten days, with his reasons, in writing; and, if two thirds are found in favor of the measure, it becomes a law. Besides the apparent propriety of such a power to protect one department against another, a reason for it derived from another source is hardly less cogent: the President, at the head of the Executive department, is bound to see the laws executed; he is also sworn to support and maintain the Constitution. Now, in case he be called upon to execute an unconstitutional law, his duties would be of the most embarrassing and conflicting character. From such a position he can be protected only by being permitted to say beforehand whether the law be unconstitutional or not.

There are other cogent reasons found for it in general policy. It is a check upon hasty legislation; it is a check upon mistaken legislation; it is a check upon intemperate legislation—the result either of sudden passion, or, what is likely to occur more frequently, the violence of party spirit. All free Governments are controlled by party, and all parties tend to extremes, and to the oppression of the minority. This tendency is strengthened and accelerated in assemblies which grow heated and exacerbated by the collisions of debate and the excitement of public discussion, from which the remoteness of the President and the intenseness of his single responsibility exempt him. Crowds of men often do acts which no one individual, even of that crowd, would venture upon. If the President (as is apt to be most frequently the case) be of the dominant party, then his veto power is at least innocuous; but if he happen to be of the minority party, or to rise superior to party feeling, then, indeed, his veto becomes *conservative*. Then the harmless, the merely *hindering*, power with which he is endowed, becomes an instrument of mercy and of good. Let it be borne in mind throughout, that the veto is but the power of hinderance. As such it was recognised and permitted to exist in the Tribunes by Sylla when he possessed himself of all other power. It is a shield to protect, not a sword to wound. It does not arm the Executive with a thunderbolt, though it may endow him with the more godlike, because the more beneficent, attribute of staying the headlong impetuosity of party rage.

It may be asked, is the case to be supposed that the two Houses of Congress will pass measures injurious to the country? I answer, yes. It may happen, and has happened. All legislative bodies fall into error—all dominant parties do wrong. Ten out of the fourteen vetoes were eminently proper—probably twelve—possibly all. I doubt whether as much can be said for any fourteen consecutive laws on your statute book.

As a mere question of authority and of the opinions of men, the weight is by no means so much in favor of the bill in any particular case as it seems to be supposed. It is said that it is the President against Congress; whereas,

It is the President and a large portion of Congress against a portion of it. It is the President with former Congresses on one side, and a present majority on the other; for all he decides is, that the judgment of a former Congress shall for the present stand. A new law abolishes an old one. The President decides that the old one is the best. The weight of authority is equal on both sides; the question being between the Congress of last year and the Congress of this—between the wisdom of the past and of the present.

Upon a comparison of the Executive department, as organized by the Constitution, with this branch of the Legislative department, we will be struck with the superior magnitude of the powers of the Senate, and the inferior responsibility of the Senators; so that, if mere theoretical objections are to have weight at this time of day, instead of carrying reform into other departments, one might tremble to see it brought within this hall. The President, in the first place, is elected by the people; we by Legislatures, intermediate between us and the people. His tenure of office is for four years, ours for six. At the end of every four years there is, or may be, a new Executive; this body is *permanent*, receiving an accession of but one-third every two years. The President has no legislative function whatever; this body has all the legislative functions. In the judicial department the President has no power; this is the high judicature of impeachments, to which he, and the judges, and all, are liable. His Executive powers are shared by us in the important particulars of appointments of public officers and the making of treaties. In short, with the most limited Executive in the world, we have a Senate of the most multifarious and exalted functions—far beyond those with which the French Chamber of Peers or the English House of Lords are endowed. In its organization this is a very exalted, august, and powerful body. We are representatives of sovereign States—lawgivers—judges—and possessing Executive power. We are but fifty-six, not one-fourth of either of the foreign Senates to which I have alluded. Here is an immense aggregation of power; may it be always characterized by a corresponding dignity and wisdom. Is it decent, or prudent, or safe, for us to ask for more power, or complain that some small check upon us has been confided to the President? Sir, we are the very pivot upon which the nicely adjusted checks and balances of the whole system hang and quiver; and if either scale be made too light our function is gone.

The great difficulty in the original construction of our Constitution was, to reconcile the sectional and conflicting interests of a wide extended and diversified empire. In the first place, there was the artificial division of States, separating us into various communities and political associations; and in the second place, there were the great permanent divisions of climate and soil, inducing, of course, the most striking differences in the industrial habits of the population. Besides these, there was the accidental and most marked distinction of domestic slavery in one section.

All these required that, in any common Government, there should at once be found a pervading spirit of compromise, and also a sufficient power to protect sectional rights and interests. It was obvious, from the beginning, that a certain degree of conflict would always exist between those opposing interests, and that combinations might be formed by majorities to oppress minorities. In this body, States are represented. In the other House, minute subdivisions of States. The gratitude, the

associations, the sympathies, the quick instinctive impulse, of every member are for his immediate local constituents. On questions of great magnitude, we rise to the contemplation of the whole ; but it is with an effort. The President is elected by all the States, all the sections, all the people. He is not called upon to rise from a part to the whole ; for to the whole he belongs. He is not called upon to attend to local or sectional interests, opinions, or prejudices ; but it is his interest, as well as his duty, to see that all are harmonized under the Constitution ; and in case of tyrannical combinations, he stands in a constitutional position to protect the weaker, and readjust the equilibrium. This view of the matter cannot but present itself to the contemplation of the Southern section—the weakest, the most peculiar, the most segregated—that against which, at this moment, is directed, by all the arts of a cunning policy, and all the fury of an inflamed fanaticism, a burning tide of public opinion, already bubbling and hissing in these halls. I do not intend to stir up these angry elements now, and far less to intimate that the Southern section, if the worst come to the worst, is not able to take care of itself. What I infer is, that the checking power of the President might be a resource against that worst—might give the assailed section the strength, not only of law, but of the forms of law, and protect us by the Constitution, instead of our being remitted to our natural rights and our own force. The whole position of the presidential office would authorize and call upon him to perform such a duty ; and, besides the constitutional obligations upon him to interpose, I cannot but hope and believe that, standing upon that empyreal elevation, at once the height and end of human ambition, he would feel his moral nature purified and invigorated by that superior atmosphere, to the great task of performing this sacred good. It will be perceived at once, how large a portion of these moral influences depends upon the abstraction of all motives but those of duty from the bosom of the President ; that he should not be in a condition to expect any thing from future majorities, or be deterred from his duty by the dread of failing—the desire of succeeding in a re-election. To constitute him the fit, the safe, and the efficient trustee of this great duty, he should be incapable of all motives but to perform it.

The Senator from Kentucky has adverted to the Constitutions of the various States, either for confirmation or illustration of his views of the Executive veto. I do not think that an examination of them will aid his argument. They establish no general principle, unless it be, that, where the separation of the Executive department from the Legislative has been attempted to be maintained, the veto is allowed. A majority of the States have adopted a qualified veto, viz : Maine, New Hampshire, Massachusetts, Connecticut, New York, Pennsylvania, Georgia, Kentucky, Mississippi, Alabama, Louisiana, Indiana, Illinois, Missouri, and Michigan—fifteen ; being a majority of the old States, a majority of the new States, and counting a vast majority of the population. In all these States, with the single exception of Kentucky, the Executive is elected by the people. In most of the others, he is elected by the Legislature, showing that the separation between the co-ordinate branches of Government is but little insisted on—or, rather, that the Governor is a mere ministerial officer of the Legislature, without those high powers embraced in the idea of an Executive. In general, where the Executive is recognised as a co-ordinate department, it is endowed with the power of self-protection by veto.

I am aware that the Senator's proposition does not propose, in terms, to abrogate the veto, but only to impose stronger restrictions upon it, by allowing it to be overruled by a bare majority, instead of requiring two-thirds. Practically, the requiring of a bare majority removes the check entirely, or divests it of all its most essential benefits. Its very object is to check the majority. In popular institutions party governs, and the dominant party commands majorities. Whatever, therefore, the intemperance of party enacts, it can maintain; and, by the proposition, the appeal taken by the Executive is to be tried on the spot by those from whom the appeal was taken. In an appeal from Philip drunk to Philip sober there was reason. Time is often a corrector. The space between the sessions of Congress would be something; but two votes at the same session amount to nothing. The prevalence of party is inseparable from our form of government. Party in deliberative assemblies organizes itself by caucus, and one predominating spirit is apt to preside in caucus. Thus, practically and in fact, the whole contest between the veto and the assembly, on subjects of much excitement, is a contest between "the one-man power" on both sides.

Upon the whole, Mr. President, considering that the veto is purely a conservative power; that we are liable to more frequent and greater harm from rash legislation than from declining to act without a numerous concurrence; that the Executive department ought to be able to protect itself in its peculiar sphere; that we secure a more zealous execution of laws at the hands of those who have not objected to their enactment; that the representative of all the sections and all the States may protect the weaker against combinations of interests or numbers—I am not inclined to change our Constitution. I approve the theory on which our ancestors established the veto, and thus far our history has sanctioned their wisdom.

